

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3082 of 2007()

CC.1143/2005 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER: ACCUSED

K.P.UMMER HAJI, S/O UTHANKUTTY,
THANVEER VILLA, PULASSERY HIGH SCHOOL ROAD,
KOPPAM POST, PATTAMBI, OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
= = = = =
Crl.M.C. No. 3082 Of 2007
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Dated this the 9th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for the offence punishable, inter alia, under Sections 420 and 468 IPC. Cognizance has been taken on the basis of a final report submitted by the Police, after due investigation. According to the petitioner the prosecution initiated against him is nothing but a counter blast against the 138 prosecution initiated by the petitioner against the de facto complainant. Cognizance has been taken in the 138 prosecution against the de facto complainant. The petitioner is employed abroad. He is not available in India. The petitioner was not arrested in the course of investigation. He has not been served with any notice or process of the Court. He accordingly has not entered appearance before the learned Magistrate and the learned Magistrate has issued warrant of arrest against the petitioner. The warrant of arrest issued against the petitioner by the learned Magistrate is chasing him now. According to the petitioner, he is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate

directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

3. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE

